



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

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March 21, 2012

Mr. James M. Smith
303 Little Station Road
Holland, Michigan 49424

Re: Formal Complaint 12-FC-54; Alleged Violation of the Access to Public Records Act by the Blackford County Clerk's Office

Dear Mr. Smith:

This advisory opinion is in response to your formal complaint alleging the Blackford County Clerk's Office ("Clerk") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Blackford County Clerk, Laura Coons, responded to your formal complaint. Her response is enclosed for your reference

BACKGROUND

In your formal complaint, you allege that you submitted a written request to the Clerk on February 16, 2012 for a copy of a court order addressing Cause No. 05-C01-9402-CP-0017 that was filed on February 17, 1994 concerning Joseph R. Smith, Plaintiff v. Rosemary N. Smith and Jack L. Smith, Defendants. As of February 27, 2012, the date you filed your formal complaint with the Public Access Counselor's Office, you further allege that the Clerk has failed to respond to your request in any fashion. You provide that you have made repeated attempts to access this information verbally, however all requests have been denied as the Clerk has provided that the records were in storage and not available on microfilm.

In response to your formal complaint, the Clerk advised that it had no record of receiving your written request. The Clerk further provided that in the fall of 2011, you submitted an identical verbal request. At that time, the Clerk conducted a search and found that it no longer maintained the records that were sought. The chronological case summary revealed that the case was dismissed on January 2, 1997. Per the Indiana Rules of Court, which the Clerk has enclosed for reference, the case file was destroyed in accordance with the applicable retention schedule. As such, even if the Clerk had received your most recent request, it would not have been able to produce any records that would have been responsive to it.

ANALYSIS

The public policy of the APRA states that “(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information.” *See* I.C. § 5-14-3-1. The Clerk is a public agency for the purposes of the APRA. *See* I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Clerk’s public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

The Clerk maintains that it did not receive a request from you. As previous Public Access Counselor’s have provided, the Public Access Counselor is not a finder of fact. *See Opinion of the Public Access Counselor 10-FC-15*. Consequently, I express no opinion as to whether or not Clerk received your request. Under the APRA, if a request is delivered by mail or facsimile and the agency does not respond to the request within seven days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). A public agency may deny a request if: (1) the denial is in writing or by facsimile; and (2) the denial includes: (A) a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record; and (B) the name and the title or position of the person responsible for the denial. *See* I.C. §5-14-3-9(c). If the Clerk received your request and did not respond to it within these timeframes, the Clerk violated the APRA. However, if the Clerk did not receive your request, it was not obligated to respond to it.

The Clerk provided that it has received identical requests from you in the past regarding the records that are the subject of your formal complaint. The Clerk has advised that as the case was dismissed on January 2, 1997, it no longer maintains any records that are responsive to your request. The APRA requires public agencies to maintain and preserve public records in accordance with applicable retention schedules. *See* I.C. § 5-14-3-4(e). As long as the records you sought were disposed of in accordance with an applicable retention schedule, the Clerk did not violate the APRA by failing to maintain them beyond the retention period.



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CONCLUSION

For the foregoing reasons, it is my opinion that the Clerk did not violate the APRA if it never received your request. Further, it is my opinion that as long as the Clerk disposed of the records that were sought in accordance with the applicable retention schedule, it did not violate the APRA.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage", written in a cursive style.

Joseph B. Hoage
Public Access Counselor

cc: Laura Coons